

# Order

Michigan Supreme Court  
Lansing, Michigan

September 23, 2011

Robert P. Young, Jr.,  
Chief Justice

143328 & (37)

Michael F. Cavanagh  
Marilyn Kelly  
Stephen J. Markman  
Diane M. Hathaway  
Mary Beth Kelly  
Brian K. Zahra,  
Justices

PAUL MARSACK,  
Plaintiff-Appellee,

v

SC: 143328  
COA: 291153  
Sanilac CC: 08-032206-NI

TAMI SALENS, as Personal Representative of  
the Estate of LAURA GABRIEL, Deceased,  
Defendant-Appellant,

and

HASTINGS MUTUAL INSURANCE COMPANY,  
Defendant.

On order of the Court, the motion for immediate consideration is GRANTED. The application for leave to appeal the May 24, 2011 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we VACATE the judgment of the Court of Appeals and we REMAND this case to the Court of Appeals for reconsideration. The Court of Appeals opinion states, "Contrary to the argument raised by the personal representative, MCL 600.5852 is not a statute of limitations. Rather, MCL 600.5852 is a saving provision and an exception to the statute of limitations." Slip op at 4. The Court of Appeals opinion further states, "Consequently, the personal representative did not meet her burden of establishing that MCL 600.5852 applied." *Id.* Contrary to those statements, the personal representative, who is the defendant, did not argue that MCL 600.5852 is a statute of limitations or that it applies in this case. Rather, the personal representative argued that MCL 600.5852 does not apply in this case. Because the judgment of the Court of Appeals was based on an apparent misunderstanding of the parties' arguments, we DIRECT the Court of Appeals to reconsider its decision in light of the arguments actually made by the parties.

We do not retain jurisdiction.



h0920

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 23, 2011

*Corbin R. Davis*

Clerk